

Senate Bill 585

By: Senators Shafer of the 48th, Moody of the 56th and Balfour of the 9th

AS PASSED

AN ACT

To amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, and Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to provide for the comprehensive revision of provisions regarding tax executions and redemption of property; to provide for procedures, conditions, and limitations regarding the transfer of tax executions; to change certain provisions relating to procedures for sales under tax levies and executions; to change provisions regarding payment of excess proceeds; to provide for requirements and procedures with respect to certain tax sales; to change certain provisions regarding redemption of property; to provide for additional circumstances under which real estate transfer tax is not due and payable; to change certain provisions relating to transfer of executions; to provide for related matters; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by striking Code Section 9-13-36, relating to transfer of execution upon payment, status of transferee, and recording necessary to preserve lien, in its entirety and inserting in its place the following:

"9-13-36.

(a) Except as otherwise provided for in subsection (b) of this Code section, whenever any person other than the person against whom the same has issued pays any execution, issued without the judgment of a court, under any law, the officer whose duty it is to enforce the execution, upon the request of the party paying the same, shall transfer the execution to the party. The transferee shall have the same rights as to enforcing the execution and priority of payment as might have been exercised or claimed before the transfer, provided that the transferee shall have the execution entered on the general execution docket of the superior

court of the county in which the same was issued and, if the person against whom the same was issued resides in a different county, also in the county of such person's residence within 30 days from the transfer; in default thereof the execution shall lose its lien upon any property which has been transferred bona fide and for a valuable consideration before the recordation and without notice of the existence of the execution.

(b) This Code section shall not be applicable to tax executions. Tax executions shall be governed exclusively by Chapters 3 and 4 of Title 48."

SECTION 2.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by striking Code Section 48-3-19, which is reserved, and inserting in its place a new Code Section 48-3-19 to read as follows:

"48-3-19.

(a) As used in this Code section, the term:

(1) 'Delinquent taxpayer' means the person or persons against whom an execution has been issued or the successor in title to the property for which the execution has been issued.

(2) 'Due diligence' means the performance of a diligent search to ascertain the actual location of the record owner of the property. The following actions shall satisfy the diligent search requirements of this Code section: sending notice by first-class mail, certified mail, or statutory overnight delivery, as required by law. If the notice is returned undelivered the following actions shall satisfy the diligent search requirements of this Code section: due diligence shall include checking telephone directories for the county wherein the property is located; checking the records of the tax commissioner of the county wherein the property is located; or checking the real estate records of the clerk of the superior court of the county wherein the property is located.

(3) 'Execution' means an execution issued for the collection of any ad valorem taxes, special assessments, fees, penalties, interest, or collection costs due the state or any political subdivision thereof.

(4) 'Transferee' means a person to whom an execution is transferred.

(5) 'Transferor' means the official holding the tax executions and authorized to collect or transfer such tax executions.

(b)(1) Whenever any person other than the person against whom an execution has been issued pays an execution issued for state, county, or municipal taxes or special

assessments, the officer whose duty is to enforce the execution may transfer the execution to the party so paying the full value of the execution. No officer whose duty it is to enforce an execution issued for state, county, or municipal taxes or special assessments shall be required to make any transfer or transfers of such execution or executions. The transferee shall have the same rights as to enforcing the execution and priority of payment as might have been exercised or claimed by the tax official. The person to whom the execution is transferred shall, within 30 days of the transfer, cause the execution to be entered on the general execution docket of the superior court of the county in which the execution was issued. In default of the required entry or entries, the execution shall lose its lien upon any property which has been transferred in good faith and for a valuable consideration before the entry and without notice of the existence of the execution.

(2)(A) It shall be unlawful for any tax official covered by this subsection to pay a tax execution in order to obtain a transfer of the execution under this Code section. It shall be unlawful for any employee of a tax official covered by this subsection to pay a tax execution in order to obtain a transfer of the execution under this Code section. The tax officials covered by this subsection are:

- (i) County tax receivers, tax collectors, and tax commissioners;
- (ii) Members of county boards of tax assessors;
- (iii) Members of county boards of equalization; and
- (iv) County tax appraisers.

(B) Any execution transferred in violation of subparagraph (A) of this paragraph shall be void and unenforceable by the person obtaining the execution and such person's successors in interest.

(C) Any tax official or employee of a tax official violating subparagraph (A) of this paragraph shall be guilty of a misdemeanor.

(c)(1) Within 60 days following the transfer, the transferee shall notify the delinquent taxpayer of the transfer of the tax execution by first-class mail. The notice shall include:

- (A) The name, mailing address, and telephone number for the transferee's business office;
- (B) The amount necessary to satisfy such execution; and
- (C) Other information as deemed appropriate by the transferee.

(2) In the event that any such notice by first-class mail is returned undelivered, the transferee shall be required to perform due diligence in an effort to obtain the delinquent

taxpayer's correct address or any new owner's correct address and resend the notice by first-class mail.

(d) An execution which has been transferred shall bear interest as specified in Code Section 48-3-20 on the amount paid for such execution from the date of the transfer. In addition, the transferee may charge and collect recording fees actually expended in recording the transferred execution on the general execution docket of any county in which the transfer is recorded and such other penalties as are provided for in this title.

(e)(1) Whenever an execution has been transferred to any transferee, the transferee shall not be authorized to submit the execution to the appropriate levying officer until 12 months after the date of such transfer or 24 months after the tax giving rise to the execution was originally due, whichever is earlier. A transferee shall not have the right to advertise and sell property under a tax execution. Such right shall remain solely with the appropriate levying official, such as the sheriff or marshal.

(2) A transferee with multiple outstanding executions against the same property shall not be subject to the time period requirements of paragraph (1) of this subsection with respect to all such executions if at least one of the executions meets such requirements of paragraph (1) of this subsection.

(f) Until the execution is paid in full or satisfied, on or before November 15 of each year after the calendar year in which the transfer occurred, the transferee shall send notice by regular mail to the delinquent taxpayer and the record owner of the property advising that the tax execution is still outstanding. The notice must provide the transferee's most updated contact information, including mailing address and telephone number.

(g) Any transferee that pays the tax official more than two million dollars in any calendar year for the transfer of executions shall maintain a reasonably accessible office within 50 miles of the courthouse wherein the superior court of the county wherein the transferred executions were issued is located. Said office shall be open to the public for at least eight hours per day for five days a week, official state holidays excepted."

SECTION 4.

Said title is further amended in Code Section 48-4-1, relating to procedures for sales under tax levies and executions, by striking subsection (a) and inserting in its place a new subsection (a) to read as follows:

"(a)(1) Except as otherwise provided in this title, when a levy is made upon real or personal property, the property shall be advertised and sold in the same manner as provided

for executions and judicial sales. Except as otherwise provided in this title, the sale of real or personal property under a tax execution shall be made in the same manner as provided for judicial sales; provided, however, that in addition to such other notice as may be required by law, in any sale under a tax execution made pursuant to this chapter, the defendant shall be given ten days' written notice of such sale by registered or certified mail or statutory overnight delivery. The notice required by this Code section shall be sent:

(A) In cases of executions issued by a county officer for ad valorem taxes, to the defendant's last known address as listed in the records of the tax commissioner of the county that issued the tax execution;

(B) In cases of executions issued by a municipal officer for ad valorem taxes, to the defendant's last known address as listed in the records of the municipal officer of the municipality that issued the tax execution; or

(C) In cases of executions issued by a state officer, to the defendant's last known address as listed in the records of the department headed by the issuing officer.

(2) A copy of the notice provided for in paragraph (1) of this subsection shall also be sent by the same tax officer sending the notice to the defendant to the appropriate tax official of the state, county, or municipality which also has issued an execution with respect to such property."

SECTION 5.

Said title is further amended by striking Code Section 48-4-5, relating to payment of excess proceeds of a tax sale by a tax commissioner or tax collector, and inserting in its place a new Code Section 48-4-5 to read as follows:

"48-4-5.

(a) If there are any excess funds after paying taxes, costs, and all expenses of a sale made by the tax commissioner, tax collector, or sheriff, or other officer holding excess funds, the officer selling the property shall give written notice of such excess funds to the record owner of the property at the time of the tax sale and to the record owner of each security deed affecting the property and to all other parties having any recorded equity interest or claim in such property at the time of the tax sale. Such notice shall be sent by first-class mail within 30 days after the tax sale. The notice shall contain a description of the land sold, the date sold, the name and address of the tax sale purchaser, the total sale price, and the amount of excess funds collected and held by the tax commissioner, tax collector, sheriff, or other officer. The notice shall state that the excess funds are available for

distribution to the owner or owners as their interests appear in the order of priority in which their interests exist.

(b) The tax commissioner, tax collector, sheriff, or other officer may file, when deemed necessary, an interpleader action in superior court for the payment of the amount of such excess funds. Such excess funds shall be distributed by the superior court to the intended parties, including the owner, as their interests appear and in the order of priority in which their interests exist. The cost of litigation such an interpleader action, including reasonable attorney's fees, shall be paid from the excess funds upon order of the court.

(c) After five years have elapsed from the tax sale date, the tax commissioner, tax collector, sheriff, or other officer holding excess funds shall pay over to the department any excess unclaimed funds and for which no action or proceeding is pending in a claim for payment. Once excess funds are placed in the possession of the department, only a court order from an interpleader action filed in the county where the tax sale occurred, by the claimant for the funds, shall serve as justification for release of the funds."

SECTION 6.

Said title is further amended by striking Code Section 48-4-44, relating to quitclaim deeds by purchaser, and inserting in lieu thereof a new Code Section 48-4-44 to read as follows:

"48-4-44.

(a) In all cases where property is redeemed, the purchaser at the tax sale shall make a quitclaim deed to the defendant in fi. fa., which deed shall recite:

(1) The name of the person who has paid the redemption money; and

(2) The capacity in which or the claim of right or interest pursuant to which the redemption money was paid.

(b) The recitals required by subsection (a) of this Code section shall be prima-facie evidence of the facts stated.

(c) If the quitclaim deed provided for in subsection (a) of this Code section is presented to the purchaser at the time such person accepts the amount payable for the redemption in the form of cash or a certified check, the purchaser shall, at that time, sign the quitclaim deed if a notary public and an unofficial witness are present to witness such signature.

(d) If no quitclaim deed is presented at the time of the redemption or if sufficient witnesses are not present, it shall be the responsibility of the purchaser to prepare and properly

execute such quitclaim deed as is required by law within seven days from the date of the redemption.

(e) It shall be the responsibility of the purchaser once the quitclaim deed is properly executed as required in subsection (d) of this Code section to present such deed for recordation to the clerk of the court within ten days of the redemption. The quitclaim deed shall be presented for recordation in the county where the tax sale originally occurred. The purchaser shall pay all recording costs and return the recorded quitclaim deed to the redeemer."

SECTION 7.

Said title is further amended in Code Section 48-6-2, relating to exemptions from real estate transfer tax, by adding a new paragraph immediately following paragraph (8) of subsection (a), to be designated paragraph (8.1), to read as follows:

"(8.1) Any deed that seeks to return any property sold at a tax sale back to the defendant in fi. fa.;"

SECTION 8.

The provisions of this Act shall apply to all executions transferred on or after July 1, 2006. Executions transferred prior to July 1, 2006, shall not be affected by this Act.

SECTION 9.

All laws and parts of laws in conflict with this Act are repealed.